DOCUMENT RESUME

ED 451 139 SP 039 806

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TITLE The Knowledge of Legal Issues Needed by Teachers and Student Teachers.
PUB DATE 2000-11-15
NOTE 11p.; Paper presented at the Annual Meeting of the Mid-South Educational Research Association (Bowling Green, KY, November 15-17, 2000).
PUB TYPE Reports - Descriptive (141) -- Speeches/Meeting Papers (150)
EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS Accountability; Civil Rights; Court Litigation; Educational Legislation; Elementary Secondary Education; Equal Education; Federal Legislation; Higher Education; *Legal Problems; Legal Responsibility; Preservice Teacher Education; Public Schools; *School Law; Student Teachers; Teacher Responsibility; Teacher Rights; Torts
IDENTIFIERS Eighth Amendment; First Amendment; Fourteenth Amendment; Fourth Amendment; *Legal Rights

ABSTRACT

For public school student teachers and teachers, many situations can result in judicial proceedings. Educators must understand requirements mandated upon them by the country's courts and legislatures. Student teachers must learn about the numerous legal issues possible in order to protect themselves against becoming involved in court cases. The number of lawsuits in education is on the rise. Research shows that teachers consider legal issues the third most essential area of teacher preparation. However, few teacher preparation programs offer undergraduate courses in educational law, and few studies detail legal issues that student teachers must know. This article summarizes common situations that occur in schools and related legislation, including: the Fourteenth Amendment, which provides equal protection of the law or due process, the First Amendment, which protects the right of free speech, freedom of religion, the right to assemble, and prohibition of establishment of a religion by a government body; the Fourth Amendment, which protects people from unreasonable search and seizure; the Eighth Amendment, which protects individuals against cruel and unusual punishment; the Education for All Handicapped Children Act of 1975; the Civil Rights Act; the Family Educational Rights and Privacy Act; and compulsory attendance statutes. (Contains 17 references.) (SM)

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ED 451 139

Running head: Legal Issues for Students and Teachers

The Knowledge of Legal Issues Needed by Teachers and Student Teachers

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Paper presented at the Annual Convention
of the
Mid-South Educational Research Association
Bowling Green, Kentucky, November, 2000

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Have you ever had one of those days when everything went wrong? For a public school teacher the scenario could be: Billy was injured during a fight while on the playground; Sam used obscene language when yelling at another student; and Johnny's parents accused you of not spending enough time with him so he can learn how to read. What a day! For student teachers and teachers employed in the public school system, any of these situations could result in a judicial proceeding.

Why should we be concerned about laws? The constant interaction of legal issues and education arises from a common concern of parents, educators, special interest groups, the state, the federal government (including the courts) who have a voice in the education of children (Gullatt & Tollett, 1995). With that concern "...it is important for educators to become aware of requirements mandated upon them by the courts and legislatures of our country." (Gullatt & Tollett, 1995, p. 5) Also, because teachers are legally obligated, held strictly accountable, and because children have many of the same rights that adults have.

Teachers and administrators function in a complex environment with numerous legal ramifications. In most cases, a student teacher's actions are subject to the same laws as are the teacher's actions (Hartmeister, 1995). During the mid 1980s to mid 1990s there was a 200% increase of lawsuits involving teachers (Valente, 1994). Since families expend considerable time, money, and effort to educate a student for a career in teaching, students should be prepared to avoid the bad judgments, indiscretions, and honest mistakes that may lead to judicial proceedings. Furthermore, all American citizens, including school personnel, are expected to know and abide by the law. According to the courts, ignorance of the law is not an accepted excuse. Furthermore, as schools' and teachers' responsibilities increase, they must be informed of the law if they are to protect their rights and the rights of students (Davis & Williams, 1992). As such, it is a wise choice to practice preventative law.

The culminating field experience of the teacher education program focuses on gaining practical teaching experience and learning the duties of a public school teacher. During student teaching "...they begin to learn what it truly means to be a professional educator, accepting the mantle of responsibility for children." (Mead & Underwood, 1995, p. 43) Those responsibilities include professional competence, artistic implementation, objective judgement, caring concern, complying with the laws that rule our society, and complying with the policies and procedures of the school district, to name a few.

In some states a student teacher might have the same rights and responsibilities as a fully certified teacher; in others the legal status might be that of an unlicensed visitor (Parkay & Stanford, 1992). Student teaching from 1900 to 1930 was completed in laboratory schools. Before 1966, there was little legal support for the placement of student teachers in regular public schools, although the practice has been in place since the early 1940s. "It was not until the early 1970s that the momentum for student teaching legislation began to increase." (Parkay & Stanford, 1992 p. 290) Thirty-six states document the legal status of student teachers: 25 by statute, 6 by implication through other laws, 4 by administrative rule of the state's board of education & 1 by an attorney general's opinion. Fourteen states do not have statutory authorization for student teachers (Henry & Beasley, 1996). "Many [officials] believe that any state that requires student teaching as a prerequisite for certification legalizes student teaching in public schools by implication." (Henry & Beasley, 1996, p. 189)

In synthesizing the states' legal status of student teachers, a commonality in the basic statements is evident. The common threads of many states are: 1) student teachers and student teaching are defined; 2) the legal status of a student teacher is defined; 3) a system for deciding the duties and responsibilities of student teachers is described; 4) immunity for student teachers is equal to that of the cooperating teacher; 5) student teachers are given

equal status and authority with cooperating teachers; 6) provision for contractual arrangements, including payment by institutions, between the institution and school district for conduct of student teaching programs; and, 7) there is tort liability insurance for student teachers (Henry & Beasley, 1996).

The significant legal problems germane to the profession at large are the same ones affecting student teaching. Until recently most states had governmental immunity that protected schools from legal prosecution. In 1975, the U. S. Supreme court ruled that school personnel could be held personally liable for violating students' legal rights (Gullatt & Tollett, 1995). The number of law suits in education is on the rise and most teachers are aware of this dramatic change. In a 1992 survey of practicing teachers, legal issues received the rating of the third most essential area of teacher preparation (Davis & Williams, 1992).

Teacher educators appear to undergo continual attempts in identifying the needs of pre-service teachers. Inherent in this search are multitudes of answers, ranging from the concrete subject knowledge to the elusive classroom management methods. One area that seems to have received little attention is legal issues. Survey research (Patterson & Rossow, 1996) which included more than 700 teacher preparation institutions showed that only 18 institutions offered an undergraduate course in educational law. Additionally, a review of educational literature reveals very few studies or articles specifically detailing the legal issues that student teachers need to know. Gullatt and Tollett (1995) stated that "there is no published source that provides an accurate and detailed accounting of all litigation involving educators in the public school" (p. 9).

The National Council for Accreditation of Teacher Education Standards (NCATE) (1995) has set standards governing the preparation of teachers. In these standards, I. D. 1 states, "candidates [educational institutions] shall complete a well-planned sequence of

courses and/or experiences in professional studies in which they acquire and learn to apply knowledge about . . . school law and educational policy" (p. 17). Although this standard is a guide, it does not offer a specific list of legal issues that future teachers should know.

The following material contains a brief summary of the most common situations that occur in schools. Student teachers are advised to learn all of the material included here and continue to keep up-to-date with the passage of other legislation. A reference text that thoroughly discusses the cases related to the subject is LaMort's School Law. It is also advisable to have a membership in a professional educator's organization in order to keep one abreast of the courts' actions and the new laws.

To understand the legal issues that affect teaching, it is often best to start at the beginning. The United States Constitution is the beginning. It is a body of precepts providing a framework of fundamental laws for this nation. The document is characterized by the provisions securing fundamental personal, property, and political rights. Education is not specifically mentioned in the Constitution; therefore it is reserved to the states and the people. By virtue of the Tenth Amendment, federal control over education is secondary to the power exercised by the state (Alexander, 1980). Along with the Constitution is a series of Amendments that clarify and add to the rights set forth by the Constitution. The linking mechanism that binds federal laws to the states is the Fourteenth Amendment, which is key to understanding the Federal government's involvement in school practices.

Of great importance is the Fourteenth Amendment which provides equal protection of the laws or due process. A case that concerned the due process provision is Ingraham v. Wright, 430 U.S. 651 (1977) in which the courts decided that corporal punishment must be reasonable. The court's questions were: Does the use of corporal punishment violate the Eighth Amendment (cruel and unusual punishment), and was some type of procedural due

process (Fourteenth Amendment) required before administering the punishment (Connors, 1979). The Supreme court found that corporal punishment does not violate the Eighth or the Fourteenth Amendments because the due process clause does not require notice and hearing for this action (Connors, 1979).

The First Amendment protects the right of free speech, freedom of religion, the right to assemble, and the prohibition of establishment of a religion by a governmental body. The landmark case of Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969) (LaMorte, 1987), concerned students' right to wear black armbands in protest of the Vietnam War. The courts affirmed students' rights of free speech. Schools can regulate students' speech if it poses a substantial threat of school disruption, is libelous, or judged vulgar or obscene after publication (Parkay & Stanford, 1992). Enforcement of prior restraints or censorship is allowed after clear publication of the rules. Another part of the First Amendment requires that teachers in public schools not read the Bible to the class or discuss topics related to religious doctrine. But schools may not prohibit the student's choice of religion or their practice of that religion.

The Fourth Amendment protects individuals from an unreasonable search and seizure of their person, houses, papers, and effects. In schools, personnel have the responsibility of keeping the facilities free from contraband (drugs & drug paraphernalia, weapons, obscene materials). An example case is New Jersey v. T.L.O., 469 U.S. 325 (1985) in which a high school principal's search of a student's purse exposed drug items. The court affirmed the school's reasonable cause to search.

The Eighth Amendment protects individuals against cruel and unusual punishment, which has become a part of the litigation against corporal punishment. "In the past, a child would receive a spanking at school, and when (s)he got home, he would get another one from

his parents. Today, when a student is spanked at school, his parents could easily file a lawsuit" (Kreamelmeyer, 1991, p. 109). In 1975, the courts affirmed the use of corporal punishment if: 1) the student had been warned that certain conduct was punishable by paddling, 2) a second teacher or official who is knowledgeable about the reason to administer corporal punishment must be present, and 3) the parents are entitled to a written account of the student's misdeed (Hartmeister, 1996).

The Education for All Handicapped Children Act of 1975 (Public Law 94-142), and its subsequent amendments provide federal funding and numerous regulations to help education agencies offer special services. In Pennsylvania Association for Retarded Children v. Pennsylvania, 343 F.Supp. 279 (PA 1972) schools must provide a free education for all children despite their disability.

Discrimination based on race, color, or national origin is prohibited by the Civil Rights Act of 1964, Title VI. Before this act, the landmark case of Brown v. Board of Education of Topeka, 1954 affirmed the individual's right to an equal education. It also reversed Plessy v. Ferguson which had established the doctrine of separate but equal education. The Civil Rights Act began the momentum that gained equality for many other groups. The Rehabilitation Act of 1973, Section 504 added protection for handicapped individuals. In 1990 the Americans with Disabilities Act was passed. It is commonly referred to as the emancipation proclamation for the disabled. Other acts provide protection based on gender (Title IX of the Educational Amendments of 1972) and for non-English speaking students (Equal Educational Opportunities Act, 1974).

The Family Educational Rights and Privacy Act of 1972 (FERPA), commonly known as the Buckley Amendment and the Pupil Protection Act of 1974 guarantee personal rights

concerning school records. The provisions dictate who has access to student records and how the parents may challenge the material contained in the records.

All 50 states have compulsory attendance statutes. These statutes require children of certain ages to attend school. In the landmark case of Pierce v. Society of Sisters, the courts affirmed the doctrine of compulsory school attendance and established the roles of private and home schooling as fulfillment of this statute.

Tort is a civil wrong arising out of a breach of duty that is imposed by law. This means that the responsible person did not prevent a foreseeable injury. "Most states hold student teachers accountable for injuries to students by requiring and allowing student teachers to be given protection under school district policies or state liability laws" (Henry & Beasley, 1996, p. 195). There are many cases concerning the injury of students that used tort as the basis. Most often it is a case of negligence that lands teachers and student teachers into trouble. In Peter W. v. San Francisco Unified School District, 131 Calf. Rptr 854 (Cal., 1976) an 18 year old graduate claimed he had not gained basic academic skills. He contended that he could not read at the eighth-grade level as required by California state law because educators did not diagnose his reading disabilities. The Appellate court dismissed this educational malpractice suit based on tort because three of the four care standards were not met (Hartmeister, 1995).

Other topics courts deem important include: mandatory vaccinations, as affirmed by the Mississippi Supreme Court in Brown v. Stone; suspension or temporary separation was considered by the courts in Goss v. Lopez, 419 U.S. 565 (1975) which held that students suspended for up to 10 days must be accorded constitutional protection. Another issue is expulsion, which is the permanent denial of educational rights. A contest usually occurs because of the manner or procedure used to expel a student. The courts have held that schools must follow a strict procedural due process for expulsion, usually requiring a school

board action and an attorney. Use of facilities is an issue detailed in the Equal Access Act that allows students to organize and meet outside of instructional hours, despite religious, philosophical, or political affiliation.

An issue that is often overlooked is child abuse reporting. Child abuse reporting is guided by the National Child Abuse Prevention and Treatment Act of 1974. Many schools have a list of specific symptoms that teachers must watch for and specific procedures to follow.

Finally, copyright practices, school dress codes, and classroom assignments policies are usually found in local policies and procedures manuals. With the myriad issues, it is difficult for teachers to stay current with new legislation and court proceedings, but it is necessary.

While "[l]egal control of public education resides with the state as one of its sovereign powers" (McCarthy & Cambron-McCabe, 1987 p. 512), the courts continue to invalidate school practices and policies. If these practices and policies are arbitrary, or unrelated to educational objectives, or violate protected individual rights without an overriding justification, the courts will be involved. "Students have a state-created property right to attend school that cannot be denied without procedural requisites" (McCarthy & Cambron-McCabe, 1987, p. 516).

In summary, there are numerous legal issues that must be considered in a school. Student teachers are strongly advised to learn about these issues as their best protection against becoming involved in a court case. The training of a student to be a teacher is a multifaceted process. The legal aspect of the teaching profession is one to those facets. A full understanding of the legal responsibilities of a teacher is part of becoming a truly professional educator. Otherwise, we are short-changing our young teachers by licensing them with little or no awareness of the serious legal pitfalls and ways to avoid them (Hazard, 1976).

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